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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of Station)	
WTVE(TV), Channel 51,)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	
CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a)	
New Television Station On)	
Channel 51, Reading, Pennsylvania)	

TO: Administrative Law Judge Richard Sippel

REPLY TO PRELIMINARY MOTION
OF ADAMS COMMUNICATIONS CORPORATION

Reading Broadcasting, Inc. ("Reading"), by its attorneys and pursuant to the Presiding Officer's *Order* of July 14, 1999, hereby replies to the July 22, 1999 Preliminary Motion (the "Adams Motion") filed by Adams Communications Corporation ("Adams").

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List A B C D E

1. Relevant Comparative Factors.

The Adams Motion is devoid of references to the most pertinent decision here, which is the Commission's *First Report and Order*¹ in the broadcast auction proceeding. In Paragraph 214 of that decision, the Commission stated its intention to decide comparative renewal cases "as nearly as possible according to the standards in effect prior to *Bechtel II*." This can only mean that long-standing comparative factors such as local ownership, local civic involvement and past broadcast experience should be weighed as part of the comparative analysis.

The *Bechtel II* decision² found the Commission's integration policy to be arbitrary and capricious, but it does not follow that every underlying element of that policy must be rejected. The *Bechtel II* court focused on the quantitative integration analysis with respect to proposals to work at the station, and particularly the lack of permanence and enforceability of such proposals. Now that an applicant's promise to work at a broadcast station is meaningless, it does not follow that local residence, local civic involvement and broadcast experience on the part of the applicant are also meaningless. In fact, those are the factors that the *Bechtel II* court considered logical and defensible, in contrast to the quantitative integration preference.³ Adams's

¹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Fixed Service Licenses*, 13 FCC Rcd 15920 (1998) ("*First Report and Order*").

² *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993) ("*Bechtel II*").

³ *See Bechtel II*, 10 F.3d at 882, 884, 885.

broad-brush rejection of the qualitative enhancement factors is not supported by a fair reading of *Bechtel II* and the *First Report and Order*.

Adams urges the inclusion of “past broadcast record” as a comparative factor in this case. What Adams does not say, however, is that long-standing Commission policy requires a *prima facie* showing of an unusually good or unusually bad broadcast record in order for any evidence of this nature to be considered.⁴ In contrast to Reading’s *prima facie* showing as to WTVE’s specialized programming, no party in this proceeding has presented a *prima facie* showing of an unusually good or unusually bad broadcast record by either applicant. Therefore, no basis exists for accepting evidence as to either applicant’s past broadcast record.

2. Relevant License Period.

Adams argues that August 1, 1989 to August 1, 1994 is the relevant license term, notwithstanding the fact that Reading underwent a long-form transfer of control when it emerged from Chapter 11 on March 12, 1992. Adams cites no precedent to support its theory, but instead attempts to distinguish the Fox Television decision.⁵

Adams focuses on Michael Parker, who had no direct or indirect ownership interest in Reading before the conclusion of the company’s

⁴ See *Old Time Religious Hour*, 96 FCC 2d 551 (Rev. Bd. 1984); *Pleasant Broadcasting Co.*, 19 FCC 2d 964 (Rev. Bd. 1969).

⁵ *Fox Television Stations, Inc.*, 7 FCC Rcd 3801 (ALJ 1992) (subsequent history omitted).

reorganization in 1992. Instead, Parker was a corporate officer and, through his corporation, Partel, Inc., a consultant to Reading pursuant to the Management Services Agreement attached to the Adams Motion. That Management Services Agreement included compensation provisions providing Partel with a right to acquire a non-controlling interest upon confirmation of a plan of reorganization. However, this form of future interest is not an attributable interest until it vests.⁶ Similarly, the fact that Partel's cash compensation under the agreement was tied to WTVE's net revenues did not turn Partel into an equity owner.

Parker only became a stockholder, with an equity interest (through Partel) of approximately 30%, after the company emerged from Chapter 11 in 1992. At that time, Partel and numerous other stockholders were added and the outstanding stock in the company went from 50,000 shares to 419,038 shares, requiring long-form approval of the FCC pursuant to an application on FCC Form 315.⁷ The Commission recognizes this type of transfer of control as a major change in ownership, and Adams's efforts to provide unique treatment for this transfer of control are unprecedented and unsupported.⁸

⁶ See 47 C.F.R. § 73.3555 NOTE 2(f).

⁷ See 47 C.F.R. § 73.3540. Had there not been a substantial change in ownership, the transfer of control application to emerge from Chapter 11 would have been a *pro forma* application on FCC Form 316.

⁸ The distinction between a non-substantial transfer of control, pursuant to FCC Form 316, and a substantial transfer of control, pursuant to FCC Form 315, is embedded in Sections 309 and 310 of the Communications Act of 1934, as amended.

Adams's theory is particularly illogical in this case. The purpose of defining the relevant period is to predict whether Reading will serve the public interest better than the challenger. The period in which Reading operated the station as a debtor-in-possession under Chapter 11 offers little predictive value, given the undeniable financial constraints under which the company was operating. The renewal expectancy analysis must be based on the most probative period, which in this case began on March 12, 1992.⁹

Respectfully submitted,

READING BROADCASTING, INC.

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⁹ See *Monroe Communications Corp. v. FCC*, 900 F.2D 351 (D.C. Cir. 1990) (the latter part of the renewal term, when the station converted to subscription television operation, is the most probative for purposes of the renewal expectancy issue).

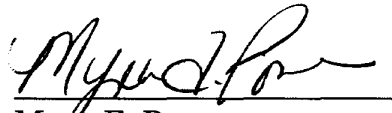
CERTIFICATE OF SERVICE

I, Myra Powe, a secretary in the law firm of Holland & Knight LLP do hereby certify that a copy of the foregoing Reply to Preliminary Motion of Adams Communications Corporation was served, this 29th day of July 1999, via hand delivery, to the following:

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